

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 96.11, the Director of the Department of Workforce Development hereby gives Notice of Intended Action to amend Chapter 23, “Employer’s Contribution and Charges,” and Chapter 25, “Benefit Payment Control,” Iowa Administrative Code.

These proposed amendments update, clarify and simplify the procedures by which claimants and employers interact with Iowa Workforce Development. The amendments also bring the rules up to date by reflecting changes in technology and efficiencies developed within the agency since the affected rules were adopted. The agency needs to have administrative rules that address these changes.

Any interested person may make written or oral suggestions or comments on the proposed amendments on or before September 5, 2017, by sending them to David J. Steen, Attorney, Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to david.steen@iwd.iowa.gov.

These amendments do not have any fiscal impact on the State of Iowa.

Waiver provisions do not apply to this rule making.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 96.

The following amendments are proposed.

ITEM 1. Amend paragraph **23.2(6)“c”** as follows:

c. In the absence of an agreement in a contract of hire, the rate for board, rent, housing, lodging, meals, or similar advantage, furnished in addition to money wages or wholly comprising the wages of an employed individual, shall be deemed to have not less than the following cash value except as provided in paragraph “d” of this subrule.

Full board and room per week.	\$272.00	300.00
Meals (without lodging) per week.	92.00	100.00
Meals (without lodging) per day	18.40	20.20
Lodging (without meals) per week	180.00	198.00
Lodging (without meals) per day	36.00	40.00
Individual meals:		
Breakfast.	4.00	4.50
Lunch	4.80	5.30
Dinner	9.60	10.50
A meal not identifiable as either breakfast, lunch or dinner.	4.00	4.50

ITEM 2. Amend subrule 23.14(1), introductory paragraph, as follows:

23.14(1) An employing unit having services performed for it which are not subject to the compulsory coverage provisions of the Act may file an application ~~Form 68-0598, Voluntary Election~~, for voluntary election to become an employer under the law or to extend its coverage to individuals performing services which do not constitute employment as defined in the law.

ITEM 3. Amend paragraph **23.14(1)“e”** as follows:

e. The ~~effective date of filing of a~~ the voluntary election ~~shall be deemed to be~~ is the date on which the written election, signed by a legally authorized individual, ~~that it~~ is received by the department.

ITEM 4. Rescind subrule 23.31(1) and adopt the following **new** subrule in lieu thereof:

23.31(1) Application and required information.

a. The experience of a distinct and segregable portion of an organization, trade, or business shall be transferred to an employing unit which has acquired such portion only if the successor employing unit:

- (1) Completes an electronic registration within 90 days after the date of purchase;
- (2) Submits necessary information establishing the separate identity of the accounts within 30 days after request is made by the department unless the time is extended for good cause shown; and
- (3) Continues to operate the acquired portion of the business.

b. Necessary information establishing the separate identity of the account includes but is not limited to:

- (1) Authorized agreement to the transfer by the predecessor;
- (2) Date of acquisition of the segregable portion;
- (3) Date of commencement of the segregable portion by the predecessor;
- (4) The names of employees, their social security numbers, and their wages attributable to the acquired portion of the business for the six calendar quarters including and immediately preceding the quarter in which the acquisition occurred; and
- (5) The predecessor and successor names, addresses, and account numbers and information showing the total taxable wages and benefit charges to be transferred by quarter, for the 20 calendar quarters including and immediately preceding the date of the acquisition.

c. It shall be the sole responsibility of the successor employer to determine whether or not to apply for a partial transfer of experience. An application for a partial transfer may be withdrawn at any time prior to the department's notice that the transfer has been approved.

d. It shall be the sole responsibility of the predecessor employer to determine whether or not to grant the partial transfer of experience. Permission to grant the partial transfer of experience may be withdrawn at any time prior to the department's notice that the transfer has been approved.

ITEM 5. Amend subparagraph **23.31(2)“b”(3)** as follows:

- (3) The individual wage records attributable to the acquired portion (~~as supplied on Form 68-0065~~);
or

ITEM 6. Amend paragraph **23.31(2)“c”** as follows:

c. If the predecessor's account has been in existence more than five years but the acquired portion came into existence within the last five years, the actual taxable wages, benefit charges, and individual wage records (~~as supplied on Form 68-0065~~) attributable to the acquired portion shall be transferred; or

ITEM 7. Amend paragraph **23.32(5)“a”** as follows:

a. The employer will be notified of the penalty contribution rate ~~on Form 95-5306, Notice of Unemployment Insurance Contribution Rate.~~

ITEM 8. Rescind subrule 23.37(2) and adopt the following **new** subrule in lieu thereof:

23.37(2) If the contribution and wage report first submitted by an employer understates the amount of wages paid for a given period, the employer will electronically submit a wage adjustment for the period and make payment covering all additional contributions, penalty and interest due.

a. If it is apparent, upon examination of any wages reported or adjusted, that a greater contribution than is required by law has been paid, the department may, within three years from the date of such overpayment, make an adjustment and issue a credit for such overpayment.

b. If it is not apparent from the examination of any wages reported or adjusted that a contribution greater than that required by law has been made, any employer or employing unit claiming a credit shall submit a request within three years from the date on which such overpayment was made. A credit shall be granted only after a review of the request which will set forth such information in the matter as may be required. If, after such review, the adjustment is found to be in order, the department shall issue a credit or refund for the overpayment.

ITEM 9. Amend paragraph **23.43(9)“b”** as follows:

b. The Iowa employer whose wage credits have been transferred and who has potential liability will be notified on ~~Form 65-5522, Notice of Wage Transfer~~, that the wages have been transferred, the state to which they have been transferred, and the mailing address to which a protest of potential charges may be mailed. This protest must be postmarked or received by the department within ten days of the date ~~the Form 65-5522 was mailed~~ on the notice to be considered as a timely protest of charges. If the protest from either the reimbursable or contributory employer justifies relief of charges, charges shall go to the balancing account.

ITEM 10. Amend subrule 23.54(2) as follows:

23.54(2) An employing unit which has appealed a determination of liability, or a payment of contributions due, shall file ~~Form 65-5300, Employer's Contribution and Payroll Report~~, quarterly contribution and payroll for all quarters for which the employer is held liable regardless of any appeal. ~~Such reports are to be marked by the employer "Appeal Filed" and submitted with full~~ Full payment of the disputed assessment, ~~without payment or with a payment in the or~~ amount estimated to be owed by the employing unit shall be submitted.

ITEM 11. Amend subrule 23.57(1) as follows:

23.57(1) If an employer, on its own motion, submits an adjustment for an error made on ~~a previous report~~ previously submitted wage detail and pays any additional contributions due on the adjustment when the employer submits the adjustment, no interest on the additional contributions will be charged if it is shown to the satisfaction of the department that the error on the original report and subsequent late payment of the contribution due on the adjustment was not the result of negligence, fraud, intentional disregard of the law or rules of the department.

ITEM 12. Amend subrule 23.59(1) as follows:

23.59(1) If the department finds from the examination of the employer's ~~reports or~~ account that the contributions have been underpaid because of a department error in assigning the contribution rate, the additional contributions shall be paid within 30 days after the department notifies the employer; however, no interest or penalty will accrue until 30 days after the notification.

ITEM 13. Rescind subrule 23.59(2) and adopt the following **new** subrule in lieu thereof:

23.59(2) Assessment—failure to file quarterly contribution and payroll.

a. If any employing unit fails to file quarterly contribution and payroll as required, the department shall make an estimate based upon any information in its possession or that may come into its possession of the amount of wages paid for employment in the period or periods for which no wage detail was filed. The basis of such estimates shall compute and assess the amounts of employer contributions payable by the employing unit together with interest and penalty.

b. Whenever the department determines that the collection of contributions from an employer is in jeopardy and the employer has failed to file the necessary wages paid for the quarter for which such contributions are due and payable or have been declared due and payable prior to the reporting date set out in rule 871—23.8(96), the department shall prepare estimated reports.

c. Such estimates may be made by authorized personnel in the tax bureau and shall be referred to the collection unit.

ITEM 14. Amend subrule 23.60(1) as follows:

23.60(1) An employer who fails to file ~~or make sufficient a report of~~ wages paid to each of its employees for any period in the time and manner set forth in Iowa Code section 96.7 and rule 871—22.3(96) shall pay to the department a penalty in accordance with Iowa Code section 96.14(2).

ITEM 15. Amend subrule 23.60(2) as follows:

23.60(2) The amount of the penalty for a delinquent or insufficient ~~report~~ quarterly contribution and payroll shall be based on the total wages paid by the employer in the period for which the report was due, ~~except that the~~. The penalty shall not be less than \$35 for the ~~delinquent report delinquency~~ or the insufficient ~~report~~ wage detail not made sufficient within 30 days of a request to do so. ~~An insufficient report~~ Insufficient wage detail is defined as a quarterly ~~report~~ submission that does not have all social

security numbers, all corresponding names, total wages for each employee, or a reporting unit number. ~~Reports~~ Wage detail submitted without a correct account number, federal employer identification number, labor market information, ~~signature~~, or ~~report wage detail~~ submitted for an unemployment account that has not yet been established by the employer or agent may be considered insufficient.

ITEM 16. Amend rule 871—23.61(96) as follows:

871—23.61(96) Collection of interest and penalties. When a ~~report wage detail~~ is filed with contributions paid but penalties and interest due, penalties and interest may be assessed and a lien filed in the same manner as for unpaid contributions.

ITEM 17. Amend subrule 23.62(1) as follows:

23.62(1) Interest and penalty charges may be rescinded whenever an employer can provide documentary evidence to the satisfaction of the department that an inquiry in writing was directed to the department within 15 days following the end of the quarter for the ~~report(s) or contribution(s)~~ contribution or payroll, untimely filed or paid, and such contributions are paid in full.

ITEM 18. Amend subrule 23.65(1) as follows:

23.65(1) Filing of liens and notice of jeopardy assessments.

a. If ~~reports wages~~ are filed by an employer for the purpose of determining the amount of contribution due, or an assessment of contribution due, and the employer fails to pay any part of the contributions, interest and penalties due ~~as determined by the report or assessment, Form 68-0043, a~~ Notice of Assessment and Lien, will be ~~sent~~ issued to the employer.

b. If, 30 days after a Notice of Assessment and Lien, or a Notice of Jeopardy Assessment, has been ~~served~~ issued (see subrule 23.59(2)) and the employer has failed to make payment in full of the amounts that were assessed, the department may file a lien with the county recorder of the county in which the employer has its principal place of business, or with the county recorder of any county in which the employer has real or personal property.

c. The lien, known as a ~~Form 68-0024~~, Notice of Lien, shall state the date of assessment, the employer's name, address and account number, and the amount due. The recorder shall record the Notice of Lien as provided in Iowa Code section 96.14(3).

ITEM 19. Amend subrule 23.65(3) as follows:

23.65(3) As provided in Iowa Code section 96.14(3), the lien shall attach as of the date the assessment is ~~mailed or personally served upon~~ issued to the employer.

ITEM 20. Amend subrule 23.65(10) as follows:

23.65(10) Upon payment of contributions, interest, penalty, and costs, the department shall execute a ~~Form 68-0199, Satisfaction of Lien~~, by filing it with the recorder's office for the county where the lien was filed. A copy of this satisfaction shall be ~~mailed~~ provided to the employer.

ITEM 21. Amend subrule 23.66(1) as follows:

23.66(1) If the department believes the collection of any contribution will be jeopardized by delay, the department may, whether or not the time otherwise prescribed by rule 871—23.8(96) for ~~making return filing~~ and paying any contribution has expired, immediately assess the contributions, together with all interest and penalty. The contributions, penalty and interest shall become immediately due and payable. The jeopardy assessment may be made by personal service upon the employer or the employer's agent by a representative of the department or civil officer of the state. Should immediate personal service not be possible, the jeopardy assessment shall be sent by certified mail to the employer's address of record and such mailing shall be a satisfactory service.

ITEM 22. Amend rule **871—25.1(96)**, definition of "Wages," as follows:

"Wages" means the same as earnings. See rules 871—24.13(96) and 871—24.16(96).

a. When a money value for board or lodging, or both, furnished a worker is agreed upon in a contract of hire, the amount so agreed upon, if more than the rates determined by the department or the rates prescribed herein, shall be deemed the cash value of the board and lodging.

b. Cash value of room and board.

(1) If board, rent, housing, lodging, meals, or similar advantage is extended in any medium other than cash as partial or entire remuneration for service constituting employment as defined in the Act (Iowa Code chapter 96) the reasonable cash value of same shall be deemed wages.

(2) Where the cash value for such board, rent, housing, lodging, meals, or similar advantage is agreed upon in any contract of hire, the amount so agreed upon shall be deemed the value of such board, rent, housing, lodging, meals, or similar advantage. Check stubs, pay envelopes, contracts, and the like, furnished to employees setting forth such cash value, are acceptable evidence as to the amount of the cash value agreed upon in any contract of hire except as provided in subparagraphs (4) and (5) of this paragraph.

(3) In the absence of an agreement in a contract of hire, the rate for board, rent, housing, lodging, meals, or similar advantage, furnished in addition to money wages or wholly comprising the wages of an employed individual, shall be deemed to have not less than the following cash value except as provided in subparagraph (4) of this paragraph.

Full board and room per week	\$272.00	<u>300.00</u>
Meals (without lodging) per week	92.00	<u>100.00</u>
Meals (without lodging) per day	18.40	<u>20.20</u>
Lodging (without meals) per week	180.00	<u>198.00</u>
Lodging (without meals) per day	36.00	<u>40.00</u>
Individual meals:		
Breakfast	4.00	<u>4.50</u>
Lunch	4.80	<u>5.30</u>
Dinner	9.60	<u>10.50</u>
A meal not identifiable as either breakfast, lunch, or dinner	4.00	<u>4.50</u>

(4) The department or its authorized representative may, after affording reasonable opportunity at a hearing for the submission of relevant information in writing or in person, determine the reasonable cash value of such board, rent, housing, lodging, meals, or similar advantage in particular instances or group of instances, if it is determined that the values fixed in or arrived at in accordance with subparagraph (3) of this paragraph, or in the contract of hire do not properly reflect the reasonable cash value of such remuneration.

ITEM 23. Amend subrule 25.16(1) as follows:

25.16(1) ~~If the individual has made no attempt to repay the overpayment of benefits within the preceding six months, the~~ The individual's name and social security number are given to the department of revenue.